

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 197

FINAL READING

(SECOND)

Introduced by Dierks, 40

Read first time January 4, 2001

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 2-3002 to
2 2-3005, 54-1162, 54-1175, 54-1180, and 54-1181, Reissue
3 Revised Statutes of Nebraska, and sections 54-1156 to
4 54-1160, 54-1165, 54-1168, 54-1169, 54-1171 to 54-1174,
5 54-1176, and 54-1182, Revised Statutes Supplement, 2000;
6 to change intent, prohibited acts, and department powers
7 and duties relating to poultry disease control; to rename
8 the Livestock Auction Act; to define terms; to change
9 provisions relating to the Livestock Auction Market
10 Board, weighing of livestock, and designated
11 veterinarians; to harmonize provisions; to eliminate
12 obsolete provisions and the Nebraska Livestock Market
13 Act; to provide operative dates; to repeal the original
14 sections; and to outright repeal sections 54-1164,
15 54-2002 to 54-2011, 54-2013, and 54-2015 to 54-2019,

LB 197

LB 197

1 Reissue Revised Statutes of Nebraska, and sections
2 54-2001, 54-2012, and 54-2014, Revised Statutes
3 Supplement, 2000.
4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-3002, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-3002. As used in the Nebraska Poultry Disease Control
4 Act, unless the context otherwise requires:

5 (1) Poultry ~~shall mean domestic chickens, turkeys, ducks,~~
6 ~~and geese of all ages~~ means domesticated fowl, including chickens,
7 turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game
8 birds, except doves and pigeons, which are bred for the primary
9 purpose of producing eggs or meat;

10 (2) Hatching eggs ~~shall mean~~ means eggs of poultry for
11 hatching purposes including embryonated eggs;

12 (3) Hatchery ~~shall mean~~ means hatchery equipment on one
13 premises operated or controlled by any person;

14 (4) Breeding flock ~~shall mean~~ means two or more
15 individuals of the same species and different sexes maintained
16 together to produce fertile eggs for the hatching of offspring;

17 (5) Person ~~shall mean~~ means an individual, corporation,
18 firm, partnership, or limited liability company or any member or
19 officer thereof; and

20 (6) Pullorum and typhoid clean ~~shall mean~~ means poultry
21 in which no ~~pullorum or typhoid~~ pullorum-typhoid reactors were
22 found on the first official blood test or which have been retested
23 with two consecutive official negative tests.

24 Sec. 2. Section 2-3003, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 2-3003. The intent of the Nebraska Poultry Disease
27 Control Act shall be to control and eradicate ~~hatchery-disseminated~~
28 poultry diseases, to provide for cooperation with the United States

1 Department of Agriculture and other states to that end, and to
2 provide authority to test breeding flocks and quarantine infected
3 flocks.

4 Sec. 3. Section 2-3004, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 2-3004. No person shall ~~buy~~, sell, offer for sale, ship
7 or import into this state, or buy from another state hatching eggs
8 or poultry, except for immediate slaughter, unless the flock or
9 hatchery of origin is following a disease control program
10 officially approved or recognized by the State Veterinarian.

11 Sec. 4. Section 2-3005, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 2-3005. (1) The State Veterinarian, subject to the
14 approval of the Director of Agriculture, shall adopt and promulgate
15 such rules and regulations ~~as are needed~~ to carry out the purposes
16 and intent of the Nebraska Poultry Disease Control Act. As far as
17 practical, the disease provisions of the rules and regulations
18 officially promulgated by the United States Department of
19 Agriculture, commonly known and cited as the National Poultry
20 Improvement Plan and Auxiliary Provisions, shall be adopted ~~(1)~~ (a)
21 to establish and maintain breeding poultry flocks and hatcheries as
22 pullorum and typhoid clean, (b) to establish requirements for
23 poultry being exhibited, (c) ~~(2)~~ to require poultry entering
24 ~~exhibitions to be tested negative to pullorum and typhoid or~~
25 ~~originate in a flock which is pullorum and typhoid clean, and (3)~~
26 to assure that only breeding poultry and hatching eggs which are
27 pullorum and typhoid clean are moved into and within Nebraska, and
28 (d) to establish testing requirements to monitor the presence of

1 pullorum and typhoid in Nebraska.

2 (2) The State Veterinarian shall have quarantine power
3 and may require reports and records from persons subject to the act
4 as established in the rules and regulations.

5 Sec. 5. Section 54-1156, Revised Statutes Supplement,
6 2000, is amended to read:

7 54-1156. Sections 54-1156 to 54-1185 shall be known and
8 may be cited as the Livestock Auction Market Act.

9 Sec. 6. Section 54-1157, Revised Statutes Supplement,
10 2000, is amended to read:

11 54-1157. It is hereby declared to be the policy of the
12 State of Nebraska, and the purpose of the Livestock Auction Market
13 Act, to encourage, stimulate, and stabilize the agricultural
14 economy of the state in general, and the livestock economy in
15 particular, by encouraging the construction, development, and
16 productive operation of livestock auction markets as key industries
17 of the state and those markets' particular trade areas, with all
18 benefits of fully open, free, competitive factors, in respect to
19 sales and purchases of livestock.

20 Sec. 7. Section 54-1158, Revised Statutes Supplement,
21 2000, is amended to read:

22 54-1158. As used in the Livestock Auction Market Act,
23 unless the context otherwise requires:

24 ~~(1) Person means any individual, firm, association,~~
25 ~~partnership, limited liability company, or corporation;~~

26 ~~(2) Department means the Department of Agriculture;~~

27 ~~(3) Director means the Director of Agriculture;~~

28 ~~(4) Accredited veterinarian means a veterinarian duly~~

1 licensed by the State of Nebraska and approved by the deputy
2 administrator of the United States Department of Agriculture in
3 accordance with 9 C.F.R. part 161 as the regulations existed on the
4 operative date of this section;

5 (2) Board means the Livestock Auction Market Board;

6 (3) Department means the Department of Agriculture;

7 (4) Designated veterinarian means an accredited
8 veterinarian who has been designated and authorized by the State
9 Veterinarian to make inspections of livestock at livestock auction
10 markets as may be required by law or regulation whether such
11 livestock is moved in interstate or intrastate commerce;

12 (5) Director means the Director of Agriculture;

13 (6) ~~(5)~~ Livestock means cattle, calves, ~~horses, mules,~~
14 swine, sheep, and goats;

15 ~~(6)~~ (7) Livestock auction market means any place,
16 establishment, or facility commonly known as a livestock auction
17 market, sales ring, or the like, conducted or operated for
18 compensation as an auction market for livestock, consisting of pens
19 or other enclosures, and their appurtenances, in which livestock
20 are received, held, sold, or kept for sale or shipment;

21 ~~(7) Market license means the license for livestock~~
22 ~~auction market operation authorized to be issued under the act; and~~

23 (8) Livestock auction market operator means any person
24 engaged in the business of conducting or operating a livestock
25 auction market, whether personally or through agents or employees;

26 (9) Market license means the license for a livestock
27 auction market authorized to be issued under the act;

28 (10) Person means any individual, firm, association,

1 partnership, limited liability company, or corporation; and

2 (11) State Veterinarian means the veterinarian in charge
3 of the Bureau of Animal Industry within the department or his or
4 her designee, subordinate to the director.

5 Sec. 8. Section 54-1159, Revised Statutes Supplement,
6 2000, is amended to read:

7 54-1159. The Livestock Auction Market Act shall not be
8 construed to include:

9 (1) Any place or operation where Future Farmers of
10 America, ~~or~~ 4-H groups, or private fairs conduct sales of
11 livestock;

12 (2) Any place or operation conducted for a dispersal sale
13 of the livestock of farmers, dairypersons, or livestock breeders or
14 feeders, where no other livestock is sold or offered for sale; or

15 (3) Any place or operation where a breeder or an
16 association of breeders of livestock assemble and offer for sale
17 and sell under their own management any livestock, when such
18 breeders ~~shall~~ assume all responsibility of such sale and the title
19 of livestock sold. This shall apply to all purebred livestock
20 association sales. ~~+~~ ~~or~~

21 ~~(4) Any presently existing livestock market known as a~~
22 ~~terminal livestock market and regulated under the provisions of the~~
23 ~~federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., and~~
24 ~~amendments thereto.~~

25 Sec. 9. Section 54-1160, Revised Statutes Supplement,
26 2000, is amended to read:

27 54-1160. There is hereby created in the Department of
28 Agriculture a Livestock Auction Market Board consisting of three

1 members. The board shall consist of the Director of Agriculture,
2 the State Veterinarian, and a livestock auction market operator to
3 be appointed by the Governor. The Director of Agriculture shall be
4 chairperson of the board. The term of office of the appointed
5 member shall be four years. The appointed member shall receive as
6 compensation for his or her services the sum of ~~ten~~ fifty dollars
7 per day or twenty-five dollars per half day and actual expenses
8 incurred while in the discharge of his or her duties. The board
9 shall meet ~~at least quarterly~~ for the ordinary transaction of
10 official business and ~~otherwise~~ at the call of the director. A
11 majority affirmative vote of the board shall be necessary to
12 constitute an official act.

13 The board shall have power and duty to:

14 (1) Administer the Livestock Auction Market Act in
15 respect to recommending the issuance, suspensions, and revocations
16 of market licenses;

17 (2) Prescribe and adopt the forms of application for
18 market licenses, the forms of notice of hearings on market license
19 applications, and such other forms as necessary to perform and
20 carry out its functions;

21 (3) Adopt and promulgate rules subject to the approval of
22 the director governing the conduct of hearings before it for
23 applications for market licenses, transfers, suspensions, and
24 revocations consistent with the Livestock Auction Market Act and
25 not contrary to the general laws of Nebraska governing hearings
26 before administrative boards; and

27 (4) Administer section 54-1166 relating to terminations
28 of market licenses and hearings regarding such terminations.

1 Sec. 10. Section 54-1162, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 54-1162. Upon the filing of the application as provided
4 in section 54-1161, the director shall fix a reasonable time for
5 the hearing at a place designated by him or her at which time a
6 hearing shall be held on the proposed location of the livestock
7 auction market. The director forthwith shall cause a copy of such
8 application, together with notice of the time and place of hearing,
9 to be served by mail not less than fifteen days prior to such
10 hearing, upon the following:

11 (1) All duly organized statewide livestock associations
12 in the state who have filed written requests with the board to
13 receive notice of such hearings and such other livestock
14 associations as in the opinion of the director would be interested
15 in such application; and

16 (2) ~~The operators of all~~ All livestock auction ~~markets~~
17 market operators in the state.

18 The director shall give further notice of such hearing by
19 publication of the notice thereof once in a daily or weekly
20 newspaper circulated in the city or village where such hearing is
21 to be held, as in the opinion of the director will give reasonable
22 public notice of such time and place of hearing to persons
23 interested therein.

24 Sec. 11. Section 54-1165, Revised Statutes Supplement,
25 2000, is amended to read:

26 54-1165. Every livestock auction market operator shall
27 pay annually, on or before August 1, a market license fee of one
28 hundred fifty dollars to the board for each livestock auction

1 market operated by him or her, which payment shall constitute a
2 renewal for one year. Fees so paid shall be remitted to the State
3 Treasurer for credit to the Livestock Auction Market Fund for the
4 use of the board in paying the expenses of administration of the
5 Livestock Auction Market Act.

6 Sec. 12. Section 54-1168, Revised Statutes Supplement,
7 2000, is amended to read:

8 54-1168. Every market license holder under the Livestock
9 Auction Market Act shall keep an accurate record of all
10 transactions conducted in the ordinary course of his or her
11 business. Such records shall be available for examination of the
12 board, or its duly authorized representative, in respect to a
13 market license issued under such act.

14 Sec. 13. Section 54-1169, Revised Statutes Supplement,
15 2000, is amended to read:

16 54-1169. The board may, upon its own motion, whenever it
17 has reason to believe the provisions of the Livestock Auction
18 Market Act have been violated, or upon verified complaint of any
19 person in writing, investigate the actions of any market license
20 holder, and if it finds probable cause to do so, shall file a
21 complaint against the market license holder which shall be set down
22 for hearing before the board upon fifteen days' notice served upon
23 such market license holder either by personal service upon him or
24 her or by registered or certified mail or telegram prior to such
25 hearing.

26 The director shall have the power to administer oaths,
27 certify to all official acts, and subpoena and bring before the
28 board any person in this state as a witness, to compel the

1 producing of books and papers, and to take the testimony of any
2 person on deposition in the same manner as is prescribed by law in
3 the procedure before the courts of this state in civil cases.
4 Processes issued by the director shall extend to all parts of the
5 state and may be served by any person authorized to serve
6 processes. Each witness who shall appear by the order of the
7 director at any hearing before the board shall receive for such
8 attendance the same fees allowed by law to witnesses in civil cases
9 appearing in the district court and mileage at the same rate
10 provided in section 81-1176, which amount shall be paid by the
11 party at whose request such witness is subpoenaed. When any
12 witness has not been required to attend at the request of any
13 party, but has been subpoenaed by the director, his or her fees and
14 mileage shall be paid by the director in the same manner as other
15 expenses of the board are paid.

16 All powers of the director as provided in this section
17 shall likewise be applicable to hearings held on applications for
18 the issuance of a market license.

19 Formal finding by the board after due hearing that any
20 market license holder: (1) Has ceased to conduct a livestock
21 auction market business; (2) has been guilty of fraud or
22 misrepresentation as to the titles, charges, number, brands,
23 weights, proceeds of sale, or ownership of livestock; (3) has
24 violated any of the provisions of the Livestock Auction Market Act;
25 or (4) has violated any of the rules or regulations adopted and
26 published by the board, shall be sufficient cause for the
27 suspension or revocation of the market license of the offending
28 livestock auction market operator.

1 Sec. 14. Section 54-1171, Revised Statutes Supplement,
2 2000, is amended to read:

3 54-1171. Any person who violates any provision or
4 requirements of the Livestock Auction Market Act is guilty of a
5 Class II misdemeanor. Each day any person operates or conducts a
6 livestock auction market in this state without a license as
7 prescribed in such act is considered a separate offense. The
8 director may institute proceedings to enjoin the operation of a
9 livestock auction market if the person sought to be enjoined is
10 operating a livestock auction market without a market license in
11 good standing as provided in such act.

12 Sec. 15. Section 54-1172, Revised Statutes Supplement,
13 2000, is amended to read:

14 54-1172. Salaries and expenses of employees, costs of
15 hearings, and all other costs of the board in the administration of
16 the Livestock Auction Market Act shall be paid from the Livestock
17 Auction Market Fund which is hereby created. Any money in the
18 Livestock Auction Market Fund available for investment shall be
19 invested by the state investment officer pursuant to the Nebraska
20 Capital Expansion Act and the Nebraska State Funds Investment Act.

21 Sec. 16. Section 54-1173, Revised Statutes Supplement,
22 2000, is amended to read:

23 54-1173. The license and permit fees collected as
24 provided by the Livestock Auction Market Act are an occupation tax
25 and shall be remitted to the State Treasurer for credit to the
26 Livestock Auction Market Fund. All money so collected shall be
27 appropriated to the uses of the Department of Agriculture for the
28 purpose of administering such act and shall be paid out only on

1 vouchers approved by the director and upon the warrant or warrants
2 issued by the Director of Administrative Services. Any unexpended
3 balance in such fund at the close of any biennium shall, when
4 reappropriated, be available for the uses and purposes of the fund
5 for the succeeding biennium; otherwise it shall lapse into the
6 General Fund.

7 Sec. 17. Section 54-1174, Revised Statutes Supplement,
8 2000, is amended to read:

9 54-1174. A copy of any license and bond provided for in
10 the Livestock Auction Market Act and certified by the director may
11 be procured upon payment of a fee of one dollar for each copy and
12 shall be received as competent evidence in any court in the State
13 of Nebraska without further proof.

14 Sec. 18. Section 54-1175, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 54-1175. No license or renewal license to establish or
17 operate a livestock auction market within the State of Nebraska
18 shall be issued, nor shall any duly licensed livestock auction
19 market within the state continue to operate, unless the livestock
20 ~~handled~~ weighed by such livestock auction market ~~shall be~~ are
21 weighed by a weighmaster duly licensed by the director to weigh
22 livestock in livestock auction markets in the State of Nebraska.

23 Sec. 19. Section 54-1176, Revised Statutes Supplement,
24 2000, is amended to read:

25 54-1176. Upon application in writing to the director,
26 accompanied by a permit fee of one dollar, the director shall issue
27 annual licenses to weighmasters required by section 54-1175. If
28 the applicant is an individual, the application shall include the

1 applicant's social security number. Subject to the conditions of
2 the Livestock Auction Market Act, the director may summarily
3 dismiss any weighmaster employee at any livestock auction market at
4 any time. The money arising from permit fees of weighmasters shall
5 be occupation tax and not license money.

6 Sec. 20. Section 54-1180, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 54-1180. All cattle, calves, ~~horses, mules,~~ swine,
9 sheep, and goats, upon entering a livestock auction ~~markets~~ market,
10 shall be inspected for health before being offered for sale. Such
11 inspection shall be made by a designated veterinarian. ~~who has~~
12 ~~been designated and authorized by the State Veterinarian to make~~
13 ~~inspections of livestock at livestock auction markets as may be~~
14 ~~required by law or regulation, whether such livestock is moved in~~
15 ~~interstate or intrastate commerce.~~ The fees for such inspection
16 shall be established by rules and regulations of the State
17 Veterinarian and shall be collected by the operator of the
18 livestock auction market. Such fees shall be used to pay the fees
19 of necessary inspections and for no other purpose, and shall be
20 remitted as may be provided by regulation. ~~When remitted to the~~
21 ~~state, the~~ The fees shall be ~~placed in~~ remitted to the State
22 Treasurer for credit to the Livestock Auction Market Fund and shall
23 be expended exclusively to pay the fees of providing necessary
24 inspections at the livestock auction market which has remitted such
25 fees. Each designated veterinarian making market inspections shall
26 be paid twenty-five dollars for each regularly scheduled sale day
27 in each calendar month as a guaranteed minimum salary for providing
28 adequate inspection services. If the fees collected each calendar

1 month by the market operator do not equal such amount, the market
2 operator shall make up the difference in his or her remittance to
3 the state. The rules and regulations establishing fees for such
4 inspection shall not be adopted, amended, or repealed until after
5 notice by mail to each market licensee and ~~authorized inspector~~
6 designated veterinarian of the time and place of hearing on the
7 question of adoption, amendment, or repeal of such rules and
8 regulations; such notice shall be mailed at least ten days prior to
9 the date of hearing and shall be sufficient if addressed to the
10 last-known address of ~~such licensee or inspector~~ each market
11 licensee and designated veterinarian shown on the records of the
12 department.

13 Sec. 21. Section 54-1181, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 54-1181. The State Veterinarian shall make the
16 designation of the ~~veterinarian~~ veterinarians required by sections
17 54-1180 and 54-1182 by entering into an agreement with any ~~duly~~
18 ~~licensed~~ accredited veterinarian for his or her professional
19 services in performing necessary inspections. Such agreement shall
20 provide that the State Veterinarian may terminate it at any time
21 for what he or she deems to be just cause, and shall further
22 provide that the state ~~shall~~ pay such veterinarian a fee as
23 established by ~~the provisions of~~ section 54-1180, which amount
24 shall be paid monthly from the Livestock Auction Market Fund. Such
25 ~~contract~~ agreement shall make the designated veterinarian an agent
26 for the Department of Agriculture to perform the duties assigned by
27 sections 54-1180 and 54-1182, and the rules and regulations
28 prescribed by the State Veterinarian, but shall not be deemed to

1 make the designated veterinarian an officer or employee of the
2 state. The orders of such designated veterinarian, issued in the
3 performance of the duties assigned ~~him by~~ under sections 54-1180
4 and 54-1182, and the rules and regulations prescribed by the State
5 Veterinarian, shall have the same force and effect as though such
6 order had been made by the State Veterinarian. ~~Veterinarians,~~
7 ~~designated in accordance with the requirements of this section,~~
8 Designated veterinarians shall not be liable for reasonable acts
9 performed to carry out the duties as set forth in sections 54-1180
10 and 54-1182 and the rules and regulations prescribed by the State
11 Veterinarian pursuant to such sections.

12 Sec. 22. Section 54-1182, Revised Statutes Supplement,
13 2000, is amended to read:

14 54-1182. Any livestock sold or disposed of at a
15 livestock auction market, before removal therefrom, shall be
16 released by the authorized designated veterinarian, ~~designated by~~
17 ~~the State Veterinarian as provided in the Livestock Auction Act,~~
18 and treated to conform with the health requirements of the rules
19 and regulations prescribed by the State Veterinarian for the
20 movement of livestock. When required, the authorized designated
21 veterinarian shall furnish each owner with a certificate showing
22 such inspection, treatment, or quarantine. No such livestock for
23 interstate or intrastate shipment shall be released until all the
24 requirements of the state of its destination ~~shall~~ have been
25 complied with. Any diseased or exposed livestock shall be handled
26 in accordance with the rules and regulations as prescribed by the
27 State Veterinarian.

28 Sec. 23. Sections 1 to 4 and 24 of this act become

1 operative on January 1, 2002. The other sections of this act
2 become operative on their effective date.

3 Sec. 24. Original sections 2-3002 to 2-3005, Reissue
4 Revised Statutes of Nebraska, are repealed.

5 Sec. 25. Original sections 54-1162, 54-1175, 54-1180,
6 and 54-1181, Reissue Revised Statutes of Nebraska, and sections
7 54-1156 to 54-1160, 54-1165, 54-1168, 54-1169, 54-1171 to 54-1174,
8 54-1176, and 54-1182, Revised Statutes Supplement, 2000, are
9 repealed.

10 Sec. 26. The following sections are outright repealed:
11 Sections 54-1164, 54-2002 to 54-2011, 54-2013, and 54-2015 to
12 54-2019, Reissue Revised Statutes of Nebraska, and sections
13 54-2001, 54-2012, and 54-2014, Revised Statutes Supplement, 2000.